The Honorable Timothy Dore
Chapter 11
Hearing Date: January 8, 2024
Hearing Time: 9:30 a.m.
Place: Seattle, Courtroom 8106
Response Due: January 2, 2024

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re: STRATEGIES 360, INC., Debtor.	CASE NO. 23-12303-TWD OFFICIAL COMMITTEE OF UNSECURED CREDITORS' LIMITED OBJECTION TO DEBTOR'S MOTION FOR ORDER APPROVING KEY EMPLOYEE RETENTION PLAN

The Official Committee of Unsecured Creditors of Strategies 360, Inc. ("Committee") hereby joins in the *United States Trustee's Limited Objection to Debtor's Motion for Order Approving Key Employee Retention Plan* (the "UST Objection"), and also offers the below additional objection:

As noted in the UST Objection, one of the *Dana II* factors to be assessed in determining the appropriateness of the Debtor's KERP is "whether the plan has a reasonable relationship to the results to be obtained." *In re Dana* Corp., 358 B.R. 567, 576–77 (Bankr. S.D.N.Y. 2006). Here, the Debtor's stated goal is to retain employees, who the Debtor describes as being an essential aspect of the Debtor's business and its value. *Motion for Order Approving Key Employee Retention*

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Plan ("KERP Motion"), ECF No. 66 at p. 2. The Committee agrees that the retention of employees is critical for the Debtor; however, the KERP proposed would only improve the Debtor's chances of retaining employees through plan confirmation, after which employees would be free to leave the Debtor and take their KERP payments with them. While retaining employees through plan confirmation would be better than failing to do so, it will not help the Debtor perform under a confirmed plan to have key employees leaving immediately thereafter. Equity incentives for employees, on the other hand, would have a more lasting impact by giving employees a reason to see the Debtor succeed over the long-term.

Further, the Committee notes that the Debtor's choice to include only a cash payment to employees, and no equity incentives, means that the cost of employee retention is borne entirely by creditors under the proposed KERP. The estimated $350,000 one-time cash payment depletes the estate of funds that would otherwise be used to repay the Debtor's over $10 Million in liabilities. By adding equity incentives to a KERP, the Debtor's owners would contribute to the goal of employee retention, rather than leaving it entirely to creditors.

The Committee submits that the Debtor should focus on a plan for employee retention that will incentivize employees over the long term; this can be done most obviously through equity incentives. At the December 20, 2023 § 341 Meeting of Creditors, John Rosenberg on behalf of the Debtor testified that the Debtor had plans to implement an Employee Stock Ownership Plan (ESOP), having previously gone so far as to announce to employees that an ESOP was being created. The Committee is not privy to the details of the Debtor's planned ESOP, and so cannot say whether that particular plan would succeed under the *Dana II* analysis; still, the Debtor should evaluate its KERP proposal in light of a longer-term goal, which should include equity incentives on some level.

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The Committee asks the Court to continue the hearing on the KERP Motion in order to give the Debtor an opportunity to supplement the record regarding the *Dana II* factors, and to further consider the KERP proposal and whether an equity component should be included.

DATED this 2nd day of January 2024.

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